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21 **UNITED STATES DISTRICT COURT**  
22 **CENTRAL DISTRICT OF CALIFORNIA**

23 LOS ANGELES WATERKEEPER, a  
24 non-profit corporation,

25 Plaintiff,

26 vs.

27 USA WASTE OF CALIFORNIA,  
28 INC., a corporation,

Defendant.

Case No. \_\_\_\_\_

COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF AND  
CIVIL PENALTIES

(Federal Water Pollution Control Act,  
33 U.S.C. §§ 1251 to 1387)

COMPLAINT

1           LOS ANGELES WATERKEEPER (“LAW”), a California non-profit  
 2 corporation, by and through its counsel, hereby alleges:

3  
 4 **I. JURISDICTION AND VENUE**

5           1. This is a civil suit brought under the citizen suit enforcement provisions  
 6 of the Federal Water Pollution Control Act, 33 U.S.C. § 1251, *et seq.* (the “Clean  
 7 Water Act” or “the Act”). This Court has subject matter jurisdiction over the parties  
 8 and the subject matter of this action pursuant to Section 505(a)(1)(A) of the Act, 33  
 9 U.S.C. § 1365(a)(1)(A), and 28 U.S.C. § 1331 (an action arising under the laws of the  
 10 United States). The relief requested is authorized pursuant to 28 U.S.C. §§ 2201-02  
 11 (power to issue declaratory relief in case of actual controversy and further necessary  
 12 relief based on such a declaration); 33 U.S.C. §§ 1319(b), 1365(a) (injunctive relief);  
 13 and 33 U.S.C. §§ 1319(d), 1365(a) (civil penalties).

14           2. On December 1, 2016, Plaintiff provided notice of Defendant’s violations  
 15 of the Act, and of Plaintiff’s intention to file suit against Defendant, to the  
 16 Administrator of the United States Environmental Protection Agency (“EPA”); the  
 17 Administrator of EPA Region IX; the Executive Director of the State Water  
 18 Resources Control Board (“State Board”); the Executive Officer of the California  
 19 Regional Water Quality Control Board, Los Angeles Region (“Regional Board”); and  
 20 to Defendant, as required by the Act, 33 U.S.C. § 1365(b)(1)(A). A true and correct  
 21 copy of LAW’s notice letter is attached as Exhibit A, and is incorporated by reference.

22           3. More than sixty days have passed since notice was served on Defendant  
 23 and the State and federal agencies. Plaintiff is informed and believes, and thereupon  
 24 alleges, that neither the EPA nor the State of California has commenced or is  
 25 diligently prosecuting a court action to redress the violations alleged in this complaint.  
 26 This action’s claim for civil penalties is not barred by any prior administrative penalty  
 27

1 under Section 309(g) of the Act, 33 U.S.C. § 1319(g).

2 4. Venue is proper in the Central District of California pursuant to Section  
3 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the source of the violations is  
4 located within this judicial district.

5 **II. INTRODUCTION**

6 1. This complaint seeks relief for Defendant's discharges of polluted storm  
7 water from Defendant's industrial facility located at 2424 East Olympic Boulevard in  
8 Los Angeles, California ("Downtown Diversion Facility") and Defendant's industrial  
9 facility located at 11616 Sheldon Street in Sun Valley, California ("East Valley  
10 Diversion Facility") in violation of the Act and National Pollutant Discharge  
11 Elimination System ("NPDES") Permit No. CAS000001, State Water Resources  
12 Control Board Water Quality Order No. 97-03-DWQ ("1997 Permit"), as renewed by  
13 Water Quality Order No. 2014-0057-DWQ ("2015 Permit") (the permits are  
14 collectively referred to hereinafter as the "Permit" or "General Permit"). Defendant's  
15 violations of the discharge, treatment technology, monitoring requirements, and other  
16 procedural and substantive requirements of the Permit and the Act are ongoing and  
17 continuous.

18 2. With every significant rainfall event, millions of gallons of polluted  
19 storm water originating from industrial operations, such as those conducted by  
20 Defendant, pour into storm drains and local waterways. The consensus among  
21 agencies and water quality specialists is that storm water pollution accounts for more  
22 than half of the total pollution entering surface waters each year.

23 3. Los Angeles area waters are ecologically sensitive areas and are essential  
24 habitat for dozens of fish and bird species as well as macro-invertebrate and  
25 invertebrate species. Storm water and non-storm water contaminated with sediment,  
26 heavy metals, and other pollutants harm the special aesthetic and recreational  
27

1 significance that Los Angeles area waters have for people in the surrounding  
2 communities. The public's use of Los Angeles area waters for water contact sports  
3 exposes many people to toxic metals and other contaminants in storm water and non-  
4 storm water discharges. Non-contact recreation and aesthetic opportunities, such as  
5 wildlife observation are also impaired by polluted discharges into Los Angeles area  
6 waters.

7 5. Industrial facilities, like Defendant's, that are discharging polluted storm  
8 water and non-storm water contribute to the impairment of downstream waters and  
9 aquatic-dependent wildlife. These contaminated discharges can and must be  
10 controlled for the ecosystem to regain its health.

### 11 **III. PARTIES**

12 6. Plaintiff LAW is a non-profit public benefit corporation organized under  
13 the laws of the State of California with its main office in Santa Monica, California.  
14 Founded in 1993, LAW is dedicated to the preservation, protection, and defense of the  
15 inland and coastal surface and groundwaters of Los Angeles County from all sources of  
16 pollution and degradation. LAW and its approximately 3,000 members are deeply  
17 concerned with protecting the environment in and around their communities, including  
18 the Los Angeles River Watershed. To further these goals, LAW actively seeks federal  
19 and state agency implementation of the Act and other laws and, where necessary,  
20 directly initiates enforcement actions on behalf of itself and its members.

21 7. LAW has members living in the communities adjacent to the Downtown  
22 Diversion Facility, the East Valley Diversion Facility, and the Los Angeles River  
23 Watershed. They enjoy using the Los Angeles River for recreation and other activities.  
24 Members of LAW use and enjoy the waters into which Defendant has caused, is  
25 causing, and will continue to cause, pollutants to be discharged. Members of LAW use  
26 those areas to recreate and view wildlife, among other activities. Defendant's  
27

1 discharges of pollutants threaten or impair each of those uses or contribute to such  
 2 threats and impairments. Thus, the interests of LAW's members have been, are being,  
 3 and will continue to be adversely affected by Defendant's failure to comply with the  
 4 Clean Water Act and the Permit. The relief sought herein will redress the harms to  
 5 Plaintiff caused by Defendant's activities.

6 8. LAW brings this action on behalf of its members. LAW's interest in  
 7 reducing Defendant's discharges of pollutants into the Los Angeles River and its  
 8 tributaries and requiring Defendant to comply with the requirements of the General  
 9 Permit are germane to its purposes. Litigation of the claims asserted and relief  
 10 requested in this Complaint does not require the participation in this lawsuit of  
 11 individual members of LAW.

12 9. Continuing commission of the acts and omissions alleged above will  
 13 irreparably harm Plaintiff and one or more of its members, for which harm they have no  
 14 plain, speedy or adequate remedy at law.

15 10. Defendant USA WASTE OF CALIFORNIA, INC. ("USA Waste") is a  
 16 corporation that owns and/or operates the Downtown Diversion Facility and the East  
 17 Valley Diversion Facility.

#### 18 **IV. STATUTORY BACKGROUND**

##### 19 **Clean Water Act**

20 11. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of  
 21 any pollutant into waters of the United States, unless such discharge is in compliance  
 22 with various enumerated sections of the Act. Among other things, Section 301(a)  
 23 prohibits discharges not authorized by, or in violation of, the terms of an NPDES  
 24 permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

25 12. Section 402(p) of the Act establishes a framework for regulating  
 26 municipal and industrial storm water discharges under the NPDES program. 33  
 27

1 U.S.C. § 1342(p). States with approved NPDES permit programs are authorized by  
2 Section 402(p) to regulate industrial storm water discharges through individual  
3 permits issued to dischargers or through the issuance of a single, statewide general  
4 permit applicable to all industrial storm water dischargers. 33 U.S.C. § 1342(p).

5 13. The EPA promulgated regulations for the Section 402 NPDES permit  
6 program defining waters of the United States. *See* 40 C.F.R. § 122.2. The EPA  
7 interprets waters of the United States to include not only traditionally navigable  
8 waters but also other waters, including waters tributary to navigable waters, wetlands  
9 adjacent to navigable waters, and other waters including intermittent streams that  
10 could affect interstate commerce. The Act requires any person who discharges or  
11 proposes to discharge pollutants into waters of the United States to submit an NPDES  
12 permit application. 40 C.F.R. § 122.21.

13 14. A significant nexus is also established if waters that are tributary to  
14 navigable waters have flood control properties, including functions such as the  
15 reduction of flow, pollutant trapping, and nutrient recycling. *Id.* at 783.

16 15. Pursuant to Section 402 of the Act, 33 U.S.C. § 1342, the Administrator  
17 of the U.S. EPA has authorized California's State Board to issue NPDES permits  
18 including general NPDES permits in California.

19 **General Permit**

20 16. The State Board elected to issue a statewide general permit for industrial  
21 storm water discharges. The State Board originally issued the General Permit on or  
22 about November 19, 1991. The State Board modified the General Permit on or about  
23 September 17, 1992. Pertinent to this action, the State Board reissued the General  
24 Permit on or about April 17, 1997 (the "1997 Permit"), and again on or about April 1,  
25 2014 (the "2015 Permit"), pursuant to Section 402(p) of the Clean Water Act, 33  
26 U.S.C. § 1342(p). The 1997 Permit was in effect between 1997 and June 30, 2015.

1 The 2015 Permit went into effect on July 1, 2015. The 2015 Permit maintains or  
2 makes more stringent the same requirements as the 1997 Permit.

3 17. In order to discharge storm water lawfully in California, industrial  
4 dischargers must comply with the terms of the General Permit or have obtained and  
5 complied with an individual NPDES permit. 33 U.S.C. § 1311(a).

6 18. The General Permit contains several prohibitions. Effluent Limitation  
7 B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit require  
8 dischargers to reduce or prevent pollutants in their storm water discharges through  
9 implementation of the Best Available Technology Economically Achievable (“BAT”)  
10 for toxic and nonconventional pollutants and the Best Conventional Pollutant Control  
11 Technology (“BCT”) for conventional pollutants. Discharge Prohibition A(2) of the  
12 1997 Permit and Discharge Prohibition III(C) of the 2015 Permit prohibit storm water  
13 discharges and authorized non-storm water discharges that cause or threaten to cause  
14 pollution, contamination, or nuisance. Receiving Water Limitation C(1) of the 1997  
15 Permit and Receiving Water Limitation VI(B) of the 2015 Permit prohibit storm water  
16 discharges to any surface or ground water that adversely impact human health or the  
17 environment. Receiving Water Limitation C(2) of the 1997 Permit and Receiving  
18 Water Limitation VI(A) and Discharge Prohibition III(D) of the 2015 Permit prohibit  
19 storm water discharges that cause or contribute to an exceedance of any applicable  
20 water quality standards contained in Statewide Water Quality Control Plan or the  
21 applicable Regional Board’s Basin Plan.

22 19. In addition to absolute prohibitions, the General Permit contains a variety  
23 of substantive and procedural requirements that dischargers must meet. Facilities  
24 discharging, or having the potential to discharge, storm water associated with  
25 industrial activity that have not obtained an individual NPDES permit must apply for  
26 coverage under the State’s General Permit by filing a Notice of Intent to Comply  
27



1 (“NOI”). Dischargers have been required to file NOIs since March 30, 1992.

2       20. Dischargers must develop and implement a Storm Water Pollution  
3 Prevention Plan (“SWPPP”). The SWPPP must describe storm water control facilities  
4 and measures that comply with the BAT and BCT standards. For dischargers  
5 beginning industrial activities before October 1, 1992, the General Permit requires  
6 that an initial SWPPP has been developed and implemented before October 1, 1992.  
7 The objective of the SWPPP requirement is to identify and evaluate sources of  
8 pollutants associated with industrial activities that may affect the quality of storm  
9 water discharges and authorized non-storm water discharges from the facility, and to  
10 implement best management practices (“BMPs”) to reduce or prevent pollutants  
11 associated with industrial activities in storm water discharges and authorized non-  
12 storm water discharges. *See* 1997 Permit, § A(2); 2015 Permit, § X(C). These BMPs  
13 must achieve compliance with the General Permit’s effluent limitations and receiving  
14 water limitations, including the BAT and BCT technology mandates. To ensure  
15 compliance with the General Permit, the SWPPP must be evaluated and revised as  
16 necessary. 1997 Permit, §§ A(9), (10); 2015 Permit, § X(B). Failure to develop or  
17 implement an adequate SWPPP, or update or revise an existing SWPPP as required, is  
18 a violation of the General Permit. 2015 Permit, Fact Sheet § I(1).

19       21. Sections A(3)-A(10) of the 1997 Permit set forth the requirements for a  
20 SWPPP. Among other requirements, the SWPPP must include: a pollution prevention  
21 team; a site map; a list of significant materials handled and stored at the site; a  
22 description of potential pollutant sources; an assessment of potential pollutant sources;  
23 and a description of the BMPs to be implemented at the facility that will reduce or  
24 prevent pollutants in storm water discharges and authorized non-storm water  
25 discharges, including structural BMPs where non-structural BMPs are not effective.  
26 Sections X(D) – X(I) of the 2015 Permit set forth essentially the same SWPPP  
27



1 requirements as the 1997 Permit, except that all dischargers are now required to  
2 develop and implement a set of minimum BMPs, as well as any advanced BMPs as  
3 necessary to achieve BAT/BCT, which serve as the basis for compliance with the  
4 2015 Permit's technology-based effluent limitations and receiving water limitations.  
5 See 2015 Permit, § X(H). The 2015 Permit further requires a more comprehensive  
6 assessment of potential pollutant sources than the 1997 Permit; more specific BMP  
7 descriptions; and an additional BMP summary table identifying each identified area of  
8 industrial activity, the associated industrial pollutant sources, the industrial pollutants,  
9 and the BMPs being implemented. See 2015 Permit, §§ X(G)(2), (4), (5). Section  
10 X(E) of the 2015 Permit requires that the SWPPP map depict, *inter alia*, all storm  
11 water discharge locations.

12         22. The 2015 Permit requires dischargers to implement and maintain, to the  
13 extent feasible, all of the following minimum BMPs in order to reduce or prevent  
14 pollutants in industrial storm water discharges: good housekeeping, preventive  
15 maintenance, spill and leak prevention and response, material handling and waste  
16 management, erosion and sediment controls, an employee training program, and  
17 quality assurance and record keeping. See 2015 Permit, § X(H)(1). Failure to  
18 implement all of these minimum BMPs is a violation of the 2015 Permit. See 2015  
19 Permit, Fact Sheet § I(2)(o). The 2015 Permit further requires dischargers to  
20 implement and maintain, to the extent feasible, any one or more of the following  
21 advanced BMPs necessary to reduce or prevent discharges of pollutants in industrial  
22 storm water discharges: exposure minimization BMPs, storm water containment and  
23 discharge reduction BMPs, treatment control BMPs, and other advanced BMPs. See  
24 2015 Permit, § X(H)(2). Failure to implement advanced BMPs as necessary to  
25 achieve compliance with either technology or water quality standards is a violation of  
26 the 2015 Permit. *Id.* The 2015 Permit also requires that the SWPPP include BMP  
27

1 descriptions and a BMP Summary Table. *See* 2015 Permit, § X(H)(4), (5).

2       23. The General Permit requires dischargers to develop and implement an  
3 adequate written Monitoring and Reporting Program. The primary objective of the  
4 Monitoring and Reporting Program is to detect and measure the concentrations of  
5 pollutants in a facility's discharge to ensure compliance with the General Permit's  
6 discharge prohibitions, effluent limitations, and receiving water limitations. As part  
7 of their monitoring program, dischargers must identify all storm water discharge  
8 locations that produce a significant storm water discharge, evaluate the effectiveness  
9 of BMPs in reducing pollutant loading, and evaluate whether pollution control  
10 measures set out in the SWPPP are adequate and properly implemented. The 1997  
11 Permit required dischargers to collect storm water samples during the first hour of  
12 discharge from the first storm event of the wet season, and at least one other storm  
13 event during the wet season, from all storm water discharge locations at a facility. *See*  
14 1997 Permit, § B(5). The 2015 Permit now mandates that facility operators sample  
15 *four* (rather than two) storm water discharges from all discharge locations over the  
16 course of the reporting year. *See* 2015 Permit, §§ XI(B)(2), (3).

17       24. Under the 1997 Permit, facilities must analyze storm water samples for  
18 "toxic chemicals and other pollutants that are likely to be present in storm water  
19 discharges in significant quantities." 1997 Permit, § B(5)(c)(ii). Under the 2015  
20 Permit, facilities must analyze storm water samples for "[a]dditional parameters  
21 identified by the Discharger on a facility-specific basis that serve as indicators of the  
22 presence of all industrial pollutants identified in the pollutant source assessment."  
23 2015 Permit, § XI(B)(6)(c).

24       25. Under the 2015 Permit, a facility must analyze collected samples for  
25 "[a]dditional applicable industrial parameters related to receiving waters with 303(d)  
26 listed impairments or approved TMDLs based on the assessment in Section  
27

1 X.G.2.a.ix.” 2015 Permit, § XI(B)(6)(d).

2 26. Facilities are required to make monthly visual observations of storm  
3 water discharges. The visual observations must represent the quality and quantity of  
4 the facility’s storm water discharges from the storm event. 1997 Permit, § B(7); 2015  
5 Permit, § XI.A.

6 27. Section XI(B)(2) of the 2015 Permit requires that dischargers collect and  
7 analyze storm water samples from two qualifying storm events (“QSEs”) during the  
8 first half of each reporting year (July 1 to December 31) and two QSEs during the  
9 second half of each reporting year (January 1 to June 30).

10 28. Section B(14) of the 1997 Permit requires dischargers to include  
11 laboratory reports with their Annual Reports submitted to the Regional Board. This  
12 requirement is continued with the 2015 Permit. Fact Sheet, Paragraph O.

13 29. The 1997 Permit, in relevant part, requires that the Annual Report  
14 include an Annual Comprehensive Site Compliance Evaluation Report (“ACSCE  
15 Report”). 1997 Permit, § B(14). As part of the ACSCE Report, the facility operator  
16 must review and evaluate all of the BMPs to determine whether they are adequate or  
17 whether SWPPP revisions are needed. The Annual Report must be signed and  
18 certified by a duly authorized representative, under penalty of law that the information  
19 submitted is true, accurate, and complete to the best of his or her knowledge. The  
20 2015 Permit now requires operators to conduct an Annual Comprehensive Facility  
21 Compliance Evaluation (“Annual Evaluation”) that evaluates the effectiveness of  
22 current BMPs and the need for additional BMPs based on visual observations and  
23 sampling and analysis results. *See* 2015 Permit, § XV.

24 30. The General Permit does not provide for any mixing zones by  
25 dischargers. The General Permit does not provide for any receiving water dilution  
26 credits to be applied by dischargers.  
27

1           **Basin Plan**

2           31.    The Regional Board has identified beneficial uses and established water  
3    quality standards for the Los Angeles River, including its tributary, the Burbank  
4    Western Channel, in the “Water Quality Control Plan, Los Angeles Region Basin Plan  
5    for the Coastal Watersheds of Los Angeles and Ventura Counties,” generally referred  
6    to as the Basin Plan.

7           32.    The beneficial uses of these waters include, among others, municipal and  
8    domestic supply, groundwater recharge, water contact recreation, non-contact water  
9    recreation, warm freshwater habitat, wildlife habitat, wetland habitat, marine habitat,  
10   rare, threatened, or endangered species, preservation of biological habitats, migration  
11   of aquatic organisms, spawning, reproduction, and/or early development, and shellfish  
12   harvesting. The non-contact water recreation use is defined as “[u]ses of water for  
13   recreational activities involving proximity to water, but not normally involving  
14   contact with water where water ingestion is reasonably possible. These uses include,  
15   but are not limited to, picnicking, sunbathing, hiking, beachcombing, camping,  
16   boating, tidepool and marine life study, hunting, sightseeing, or aesthetic enjoyment in  
17   conjunction with the above activities.”

18           33.    The Basin Plan includes a narrative toxicity standard which states that  
19    “[a]ll waters shall be maintained free of toxic substances in concentrations that are  
20    toxic to, or that produce detrimental physiological responses in, human, plant, animal,  
21    or aquatic life.”

22           34.    The Basin Plan includes a narrative oil and grease standard which states  
23    that “[w]aters shall not contain oils, greases, waxes, or other materials in  
24    concentrations that result in a visible film or coating on the surface of the water or on  
25    objects in the water, that cause nuisance, or that otherwise adversely affect beneficial  
26    uses.”

1           35. The Basin Plan provides that “[w]aters shall not contain suspended or  
2 settleable material in concentrations that cause nuisance or adversely affect beneficial  
3 uses.”

4           36. The Basin Plan provides that “[t]he pH of inland surface waters shall not  
5 be raised above 8.5 or depressed below 6.5.”

6           37. The Basin Plan provides that “[w]aters shall not contain floating  
7 materials, including solids, liquids, foams, and scum, in concentrations that cause  
8 nuisance or adversely affect beneficial uses.”

9           38. The Basin Plan provides that “[w]aters shall be free of coloration that  
10 causes nuisance or adversely affects beneficial uses.”

11           39. The EPA has adopted freshwater numeric water quality standards for  
12 zinc of 0.120 mg/L (Criteria Maximum Concentration – “CMC”); for copper of 0.013  
13 mg/L (CMC); and for lead of 0.065 mg/L (CMC). 65 Fed. Reg. 31712 (May 18,  
14 2000) (California Toxics Rule).

15           40. The EPA 303(d) List of Water Quality Limited Segments lists the  
16 Tujunga Wash as impaired for copper and trash, among other pollutants. See  
17 [http://www.waterboards.ca.gov/water\\_issues/programs/tmdl/integrated2012.shtml](http://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2012.shtml).  
18 Reach 4 of the Los Angeles River is listed as impaired for copper, lead, nutrients, and  
19 trash, among other pollutants. Reach 3 of the Los Angeles River is impaired for  
20 copper, lead, ammonia, nutrients, and trash. Reach 2 of the Los Angeles River is  
21 impaired for trash, oil, nutrients, copper, and lead, among other pollutants. Reach 1 of  
22 the Los Angeles River is impaired for zinc, lead, copper, trash, pH, nutrients, and  
23 pathogens, among other pollutants. The Los Angeles River Estuary is impaired for  
24 trash and sediment toxicity, among other pollutants. San Pedro Bay is impaired for  
25 sediment toxicity, among other pollutants.  
26

27           41. EPA has established Parameter Benchmark Values as guidelines for  
28

1 determining whether a facility discharging industrial storm water has implemented the  
2 requisite BAT and BCT. These benchmarks represent pollutant concentrations at  
3 which a storm water discharge could potentially impair, or contribute to impairing,  
4 water quality, or affect human health from ingestion of water or fish. The following  
5 EPA benchmarks have been established for pollution parameters applicable to the  
6 Facility: pH – 6.0 - 9.0 standard units (“s.u.”); total suspended solids (“TSS”) – 100  
7 mg/L; oil and grease (“O&G”) – 15 mg/L; chemical oxygen demand (“COD”) – 120  
8 mg/L; iron – 1.0 mg/L; aluminum – 0.75 mg/L; zinc – 0.26 mg/L; copper – 0.0332  
9 mg/L; and lead – 0.262 mg/L.

10 42. The Numeric Action Levels (“NALs”) in the 2015 Permit are derived  
11 from these benchmarks. The 2015 Permit incorporates annual NALs, which are  
12 derived from the 2008 MSGP benchmark values, and instantaneous maximum NALs,  
13 which are derived from a Water Board dataset. The following annual NALs have  
14 been established under the 2015 Permit: TSS – 100 mg/L; O&G – 15 mg/L; COD –  
15 120 mg/L; iron – 1.0 mg/L; aluminum – 0.75 mg/L; zinc – 0.26 mg/L; copper –  
16 0.0332 mg/L; and lead – 0.262 mg/L. An exceedance of annual NALs occurs when  
17 the average of all samples obtained for an entire facility during a single reporting year  
18 is greater than a particular annual NAL. The reporting year runs from July 1 to June  
19 30. The 2015 Permit also establishes the following instantaneous maximum NALs:  
20 pH – 6.0-9.0 s.u.; TSS – 400 mg/L; and O&G – 25 mg/L. An instantaneous  
21 maximum NAL exceedance occurs when two or more analytical results from samples  
22 taken for any single parameter within a reporting year exceed the instantaneous  
23 maximum NAL value (for TSS and O&G) or are outside of the instantaneous  
24 maximum NAL range for pH. When a discharger exceeds an applicable NAL, it is  
25 elevated to “Level 1 Status,” which requires a revision of the SWPPP and additional  
26 BMPs. If a discharger exceeds an applicable NAL during Level 1 Status, it is then  
27

1 elevated to “Level 2 Status.” For Level 2 Status, a discharger is required to submit an  
 2 Action Plan requiring a demonstration of either additional BMPs to prevent  
 3 exceedances, a determination that the exceedance is solely due to non-industrial  
 4 pollutant sources, or a determination that the exceedance is solely due to the presence  
 5 of the pollutant in the natural background.

6 43. Section 505(a)(1) and Section 505(f) of the Act provide for citizen  
 7 enforcement actions against any “person,” including individuals, corporations, or  
 8 partnerships, for violations of NPDES permit requirements. 33 U.S.C. §§ 1365(a)(1)  
 9 and (f), § 1362(5). An action for injunctive relief under the Act is authorized by 33  
 10 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil  
 11 penalties of up to \$51,570 for violations occurring after November 2, 2015; and up to  
 12 \$37,500 per day per violation occurring since October 28, 2011 up to and including  
 13 November 2, 2015, pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§  
 14 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1 - 19.4.

## 15 **V. STATEMENT OF FACTS**

### 16 **Violations at Downtown Diversion Facility**

17 44. Defendant owns and/or operates the Downtown Diversion Facility, a  
 18 construction/demolition debris processing facility located in Los Angeles, CA.

19 45. The Downtown Diversion Facility falls within Standard Industrial  
 20 Classification (“SIC”) Codes 5093, 4212, and 4214.

21 46. The Downtown Diversion Facility covers an area of 5 acres and is fully  
 22 paved.

23 47. Based on LAW’s investigation, including a review of the Downtown  
 24 Diversion Facility’s Notice of Intent to Comply with the Terms of the Industrial  
 25 General Permit (“NOI”), SWPPP, aerial photography, and LAW’s information and  
 26 belief, storm water is collected and discharged from the Downtown Diversion Facility  
 27



1 via at least four outfalls. Storm water discharged from the Downtown Diversion  
2 Facility flows into channels that empty into Reach 2 of the Los Angeles River, which  
3 flows into Reach 1 of the Los Angeles River and ultimately flows to the Pacific Ocean  
4 via the Los Angeles River Estuary and San Pedro Bay (collectively, “Downtown  
5 Diversion Receiving Waters”).

6 48. Information available to Plaintiff indicates that the Downtown Diversion  
7 Receiving Waters are waters of the United States.

8 49. Plaintiff is informed and believes, and thereupon alleges that the storm  
9 water flows over the surface of the Downtown Diversion Facility where industrial  
10 activities occur including receiving materials and product transport, maintenance of  
11 trucks and equipment, welding, and areas where airborne materials associated with the  
12 industrial processes at the Downtown Diversion Facility may settle onto the ground.  
13 Plaintiff is informed and believes, and thereupon alleges that storm water flowing  
14 over these areas collects suspended sediment, dirt, metals, and other pollutants as it  
15 flows towards the storm water discharge locations.

16 50. On information and belief, Plaintiff alleges that the majority of storm  
17 water discharges from the Downtown Diversion Facility contain storm water that is  
18 commingled with runoff from areas at the Downtown Diversion Facility where  
19 industrial processes occur.

20 51. On information and belief, LAW alleges that there are insufficient  
21 structural storm water control measures installed at the Downtown Diversion Facility.  
22 Plaintiff is informed and believes, and thereupon alleges, that the management  
23 practices at the Downtown Diversion Facility are currently inadequate to prevent the  
24 sources of contamination described above from causing the discharge of pollutants to  
25 waters of the United States. The Downtown Diversion Facility lacks sufficient  
26 structural controls such as grading, berming, roofing, containment, or drainage  
27

1 structures to prevent rainfall and storm water flows from coming into contact with  
2 exposed areas of contaminants. The Downtown Diversion Facility lacks sufficient  
3 structural controls to prevent the discharge of water once contaminated. The  
4 Downtown Diversion Facility lacks adequate storm water pollution treatment  
5 technologies to treat storm water once contaminated.

6 52. Since at least December 31, 2011, Defendant has taken samples or  
7 arranged for samples to be taken of storm water discharges at the Downtown  
8 Diversion Facility. The sample results were reported in the Downtown Diversion  
9 Facility's Annual Reports submitted to the Regional Board. Defendant certified each  
10 of those Annual Reports pursuant to the General Permit.

11 53. In Annual Reports and storm water sampling results submitted to the  
12 Regional Board for the past four years, the Downtown Diversion Facility has  
13 consistently reported high pollutant levels from its storm water sampling results.

14 54. The Downtown Diversion Facility has reported numerous discharges in  
15 excess of narrative and numeric water quality standards established in the Basin Plan.  
16 These observations have thus violated narrative and numeric water quality standards  
17 established in the Basin Plan and have thus violated Discharge Prohibition A(2) and  
18 Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge  
19 Prohibitions III(C) and III(D) and Receiving Water Limitations VI(A) and VI(B) of  
20 the 2015 Permit; and are evidence of ongoing violations of Effluent Limitation B(3)  
21 of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit.

22 55. The Downtown Diversion Facility has reported numerous discharges  
23 outside of the range of the numeric water quality standard for pH of 6.5 – 8.5 s.u.  
24 established in the Basin Plan. Defendant measured storm water discharges from the  
25 Downtown Diversion Facility with a pH level either below 6.5 s.u. or above 8.5 s.u.  
26 on the following dates: January 11, 2017; December 16, 2016; November 21, 2016;

1 January 5, 2016; and September 15, 2015.

2 56. The levels of pH in storm water detected by the Downtown Diversion  
3 Facility have exceeded the benchmark value and annual NAL for pH of 6.0 – 9.0 s.u.  
4 established by EPA and the State Board, respectively. On January 5, 2016, the level  
5 of pH in storm water measured by Defendant at one of the Downtown Diversion  
6 Facility's outfalls was 9.02 s.u.

7 57. The Downtown Diversion Facility has reported violations of the narrative  
8 water quality standards for discoloration and sheen contained in the Basin Plan.  
9 Discharges that violated at least one of these standards occurred on the following  
10 dates: December 2, 2014; February 27, 2014; and March 17, 2012.

11 58. The levels of TSS in storm water detected by the Downtown Diversion  
12 Facility have exceeded the benchmark value and annual NAL for TSS of 100 mg/L  
13 established by EPA and the State Board, respectively. For example, on December 2,  
14 2014, the level of TSS measured by Defendant at one of the Downtown Diversion  
15 Facility's outfalls was 290 mg/L. That level of TSS is almost 3 times the benchmark  
16 value and annual NAL for TSS. Defendant also has measured levels of TSS in storm  
17 water discharged from the Downtown Diversion Facility in excess of 100 mg/L on  
18 January 11, 2017; January 5, 2016; February 27, 2014; and March 17, 2012.

19 59. The levels of zinc in storm water detected by the Downtown Diversion  
20 Facility have exceeded the freshwater numeric water quality standard established by  
21 the EPA of 0.12 mg/L for zinc (CMC) for zinc. For example, on December 2, 2014,  
22 the level of zinc measured at one of the Downtown Diversion Facility's storm water  
23 outfalls was 0.41 mg/L. That level of zinc is over 3 times the CMC for zinc.  
24 Defendant also has measured levels of zinc in storm water discharged from the  
25 Downtown Diversion Facility in excess of 0.12 mg/L on December 12, 2014;  
26 February 27, 2014; and March 17, 2012.

27 COMPLAINT  
28

1           60. The levels of zinc in storm water detected by the Downtown Diversion  
2 Facility have exceeded the benchmark value and annual NAL for zinc of 0.26 mg/L  
3 established by EPA and the State Board, respectively. For example, on December 2,  
4 2014, the level of zinc measured at one of the Downtown Diversion Facility's storm  
5 water outfalls was 0.41 mg/L. That level of zinc is over 1.5 times the benchmark  
6 value and annual NAL for zinc. Defendant also has measured levels of zinc in storm  
7 water discharged from the Downtown Diversion Facility in excess of 0.26 mg/L on  
8 February 27, 2014; and March 17, 2012.

9           61. The levels of copper in storm water detected by the Downtown Diversion  
10 Facility have exceeded the freshwater numeric water quality standard established by  
11 the EPA of 0.013 mg/L (CMC). For example, on December 2, 2014, the level of  
12 copper measured at one of the Downtown Diversion Facility's storm water outfalls  
13 was 0.069 mg/L. That level of copper is over 5 times the CMC for copper. Defendant  
14 also has measured levels of copper in storm water discharged from the Downtown  
15 Diversion Facility in excess of 0.013 mg/L on December 12, 2014; February 27, 2014;  
16 and March 17, 2012.

17           62. The levels of copper in storm water detected by the Downtown Diversion  
18 Facility have exceeded the benchmark value and annual NAL for copper of 0.0332  
19 mg/L established by EPA and the State Board, respectively. On December 2, 2014,  
20 the level of copper measured by Defendant at one of the Downtown Diversion  
21 Facility's storm water outfalls was 0.069 mg/L. That level of copper is over twice the  
22 benchmark value and annual NAL for copper. Defendant also has measured levels of  
23 copper in storm water discharged from the Downtown Diversion Facility in excess of  
24 0.0332 mg/L on February 27, 2014; and March 17, 2012.

25           63. The levels of lead in storm water detected by the Downtown Diversion  
26 Facility have exceeded the freshwater numeric water quality standard established by  
27

1 the EPA of 0.065 mg/L (CMC). For example, on December 2, 2014, the level of  
2 copper measured at one of the Downtown Diversion Facility's storm water outfalls  
3 was 0.09 mg/L. That level of copper is almost 1.5 times the CMC for copper.  
4 Defendant also has measured levels of copper in storm water discharged from the  
5 Downtown Diversion Facility in excess of 0.065 mg/L on March 17, 2012.

6 64. The levels of iron in storm water detected by the Downtown Diversion  
7 Facility have exceeded the benchmark value and annual NAL for iron of 1 mg/L  
8 established by EPA and the State Board, respectively. For example, on December 2,  
9 2014, the level of iron measured by Defendant at one of the Downtown Diversion  
10 Facility's storm water outfalls was 10 mg/L. That level of copper is ten times the  
11 benchmark value and annual NAL for iron. Defendant also has measured levels of  
12 iron in storm water discharged from the Downtown Diversion Facility in excess of 1  
13 mg/L on December 12, 2014; February 27, 2014; and March 17, 2012.

14 65. The levels of aluminum in storm water detected by the Downtown  
15 Diversion Facility have exceeded the benchmark value and annual NAL for aluminum  
16 of 0.75 mg/L established by EPA and the State Board, respectively. For example, on  
17 December 2, 2014, the level of aluminum measured by Defendant at one of the  
18 Downtown Diversion Facility's storm water outfalls was 9 mg/L. That level of  
19 aluminum is 12 times the benchmark value and annual NAL for aluminum.  
20 Defendant also has measured levels of aluminum in storm water discharged from the  
21 Downtown Diversion Facility in excess of 0.75 mg/L on December 12, 2014;  
22 February 27, 2014; and March 17, 2012.

23 66. The levels of COD in storm water detected by the Downtown Diversion  
24 Facility have exceeded the benchmark value and annual NAL for COD of 120 mg/L  
25 established by EPA and the State Board, respectively. On December 2, 2014, the  
26 level of COD measured by Defendant at one of the Downtown Diversion Facility's  
27

1 storm water outfalls was 140 mg/L.

2 67. On information and belief, LAW alleges that COD, iron, aluminum, zinc,  
3 copper, and lead are pollutants likely to be present in the Downtown Diversion  
4 Facility's storm water discharges in significant quantities and that those pollutants  
5 have been present in the Facility's storm water discharges during the past five years.  
6 On information and belief, LAW alleges that the Downtown Diversion Facility is  
7 required to analyze its storm water discharges for COD, iron, aluminum, zinc, copper,  
8 and lead because the facility falls under SIC Code 5093. On information and belief,  
9 LAW alleges that Defendant never analyzed the Downtown Diversion Facility's storm  
10 water discharges for COD, iron, aluminum, zinc, copper, and lead, since December  
11 12, 2014.

12 68. On information and belief, LAW alleges that during the 2015-2016  
13 reporting year, Defendant failed to collect and analyze storm water samples from two  
14 out of four storm events at the Downtown Diversion Facility.

15 69. On information and belief, LAW alleges that during the 2013-2014 wet  
16 season, Defendant failed to collect and analyze storm water samples from a second  
17 storm event at the Downtown Diversion Facility.

18 70. On information and belief, LAW alleges that during the 2012-2013 wet  
19 season, Defendant failed to collect and analyze storm water samples from any storm  
20 events at the Downtown Diversion Facility.

21 71. On information and belief, LAW alleges that discharges occurred from  
22 the Downtown Diversion Facility on the following dates: October 11, 2012;  
23 November 8, 2012; December 13, 2012; December 18, 2012; December 24, 2012;  
24 January 24, 2013; January 25, 2013; February 8, 2013; March 8, 2013; May 6, 2013;  
25 November 21, 2013; December 19, 2013; March 5, 2014; April 25, 2014; November  
26 3, 2015; December 19, 2015; December 22, 2015; December 29, 2015; February 17,  
27 2016; March 11, 2016; and April 9, 2016.

1           72. On information and belief, LAW alleges that Defendant has consistently  
2 failed to collect and analyze storm water discharges from all of the sampling locations  
3 at the Downtown Diversion Facility. During the 2015-2016 reporting year, Defendant  
4 failed to collect and analyze storm water discharges from one of its outfalls. During  
5 the 2014-2015 wet season, Defendant failed to collect and analyze storm water  
6 discharges from two of its outfalls. During the 2013-2014 wet season, Defendant  
7 failed to collect and analyze storm water discharges from one of its outfalls. During  
8 the 2011-2012 wet season, Defendant failed to collect and analyze storm water  
9 discharges from one of its outfalls.

10           73. On information and belief, LAW alleges that Defendant failed to conduct  
11 monthly visual observations of storm water discharges at the Downtown Diversion  
12 Facility during the following months: 2011 – December; 2012 – January, February,  
13 April, October, November, December; 2013 – January, February, March, May,  
14 November, December; 2014 – March, April; 2015 – January, March, April, May.

15           74. On information and belief, LAW alleges that Defendant has consistently  
16 failed to comply with Section B(14) of the 1997 Permit, and Section XV of the 2015  
17 Permit, by failing to complete proper ACSCE Reports as well as proper Annual  
18 Evaluations for the Downtown Diversion Facility.

19           75. On information and belief, Plaintiff alleges that since at least December  
20 31, 2011, Defendant has failed to implement BAT and BCT at the Downtown  
21 Diversion Facility for its discharges of pH, zinc, copper, lead, aluminum, iron, TSS,  
22 COD and other potentially un-monitored pollutants. Effluent Limitation B(3) of the  
23 1997 Permit and Effluent Limitation V(A) of the 2015 Permit requires that Defendant  
24 implement BAT for toxic and nonconventional pollutants and BCT for conventional  
25 pollutants by no later than October 1, 1992. As of the date of this Complaint,  
26 Defendant has failed to implement BAT and BCT.



1           76. On information and belief, Plaintiff alleges that since at least December  
2 31, 2011, Defendant has failed to implement an adequate SWPPP for the Downtown  
3 Diversion Facility. Plaintiff is informed and believes, and thereupon alleges, that the  
4 SWPPP prepared for the Downtown Diversion Facility does not set forth site-specific  
5 best management practices for the Facility that are consistent with BAT or BCT for  
6 the Downtown Diversion Facility. Plaintiff is informed and believes, and thereupon  
7 alleges, that the SWPPP prepared for the Downtown Diversion Facility does not  
8 comply with the requirements of Section X(H) of the 2015 Permit. The SWPPP also  
9 fails to identify and implement advanced BMPs that are not being implemented at the  
10 Downtown Diversion Facility because they do not reflect best industry practice  
11 considering BAT/BCT. According to information available to LAW, the Downtown  
12 Diversion Facility's SWPPP has not been evaluated to ensure its effectiveness and  
13 revised where necessary to further reduce pollutant discharges. Plaintiff is informed  
14 and believes, and thereupon alleges, that the SWPPP does not include each of the  
15 mandatory elements required by the General Permit.

16           77. Information available to LAW indicates that as a result of these practices,  
17 storm water containing excessive pollutants is being discharged from the Downtown  
18 Diversion Facility during rain events into channels that empty into Reach 2 of the Los  
19 Angeles River, which flows into Reach 1 of the Los Angeles River and ultimately  
20 flows to the Pacific Ocean via the Los Angeles River Estuary and San Pedro Bay.

21           78. Plaintiff is informed and believes, and thereupon alleges, that Defendant  
22 has failed and continues to fail to alter the Downtown Diversion Facility's SWPPP  
23 and site-specific BMPs consistent with the General Permit.

24           79. Information available to Plaintiff indicates that Defendant has not  
25 fulfilled the requirements set forth in the General Permit for discharges from the  
26 Downtown Diversion Facility due to the continued discharge of contaminated storm  
27

1 water. Plaintiff is informed and believes, and thereupon alleges, that all of the  
2 violations alleged in this Complaint are ongoing and continuous.

3 **Violations at East Valley Diversion Facility**

4 80. Defendant owns and/or operates the East Valley Diversion Facility, a  
5 construction/demolition debris processing facility located in Sun Valley, CA.

6 81. The East Valley Diversion Facility falls within SIC Codes 5093, 4212,  
7 and 4214.

8 82. The East Valley Diversion Facility covers an area of 2 acres and is fully  
9 paved.

10 83. Based on LAW's investigation, including a review of the East Valley  
11 Diversion Facility's NOI, SWPPP, aerial photography, and LAW's information and  
12 belief, storm water is collected and discharged from the East Valley Diversion Facility  
13 via at least two outfalls. Storm water discharged from the East Valley Diversion  
14 Facility flows into channels that empty into the Tujunga Wash. The Tujunga Wash  
15 flows into Reach 4 of the Los Angeles River, which flows into Reaches 3, 2, and then  
16 1 of the Los Angeles River and ultimately flows to the Pacific Ocean via the Los  
17 Angeles River Estuary and San Pedro Bay (collectively, "East Valley Diversion  
18 Receiving Waters").

19 84. Information available to Plaintiff indicates the East Valley Diversion  
20 Receiving Waters are waters of the United States.

21 85. Plaintiff is informed and believes, and thereupon alleges that the storm  
22 water flows over the surface of the East Valley Diversion Facility where industrial  
23 activities occur including receiving materials and product transport, maintenance of  
24 trucks and equipment, fueling of trucks, welding, painting and areas where airborne  
25 materials associated with the industrial processes at the East Valley Diversion Facility  
26 may settle onto the ground. Plaintiff is informed and believes, and thereupon alleges  
27

1 that storm water flowing over these areas collects suspended sediment, dirt, metals,  
2 and other pollutants as it flows towards the storm water discharge locations.

3 86. On information and belief, Plaintiff alleges that the majority of storm  
4 water discharges from the East Valley Diversion Facility contain storm water that is  
5 commingled with runoff from areas at the East Valley Diversion Facility where  
6 industrial processes occur.

7 87. On information and belief, LAW alleges that there are insufficient  
8 structural storm water control measures installed at the East Valley Diversion Facility.  
9 Plaintiff is informed and believes, and thereupon alleges, that the management  
10 practices at the East Valley Diversion Facility are currently inadequate to prevent the  
11 sources of contamination described above from causing the discharge of pollutants to  
12 waters of the United States. The East Valley Diversion Facility lacks sufficient  
13 structural controls such as grading, berming, roofing, containment, or drainage  
14 structures to prevent rainfall and storm water flows from coming into contact with  
15 exposed areas of contaminants. The East Valley Diversion Facility lacks sufficient  
16 structural controls to prevent the discharge of water once contaminated. The East  
17 Valley Diversion Facility lacks adequate storm water pollution treatment technologies  
18 to treat storm water once contaminated.

19 88. Since at least December 31, 2011, Defendant has taken samples or  
20 arranged for samples to be taken of storm water discharges at the East Valley  
21 Diversion Facility. The sample results were reported in the East Valley Diversion  
22 Facility's Annual Reports submitted to the Regional Board. Defendant certified each  
23 of those Annual Reports pursuant to the General Permit.

24 89. In Annual Reports and storm water sampling results submitted to the  
25 Regional Board for the past four years, the East Valley Diversion Facility has  
26 consistently reported high pollutant levels from its storm water sampling results.  
27

1           90. The East Valley Diversion Facility has reported numerous discharges in  
2 excess of narrative and numeric water quality standards established in the Basin Plan.  
3 These observations have thus violated narrative and numeric water quality standards  
4 established in the Basin Plan and have thus violated Discharge Prohibition A(2) and  
5 Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge  
6 Prohibitions III(C) and III(D) and Receiving Water Limitations VI(A) and VI(B) of  
7 the 2015 Permit; and are evidence of ongoing violations of Effluent Limitation B(3)  
8 of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit.

9           91. The East Valley Diversion Facility has reported discharges outside of the  
10 range of the numeric water quality standard for pH of 6.5 – 8.5 s.u. established in the  
11 Basin Plan. Defendant measured storm water discharges from the East Valley  
12 Diversion Facility with a pH level either below 6.5 s.u. or above 8.5 s.u. on the  
13 following dates: January 20, 2017; and January 5, 2016.

14           92. The East Valley Diversion Facility has reported violations of the  
15 narrative water quality standards for discoloration and floating objects contained in  
16 the Basin Plan. Discharges that violated these standards occurred on the following  
17 dates: December 2, 2014; and February 28, 2014.

18           93. The levels of TSS in storm water detected by the East Valley Diversion  
19 Facility have exceeded the benchmark value and annual NAL for TSS of 100 mg/L  
20 established by EPA and the State Board, respectively. Defendant measured levels of  
21 TSS in storm water discharged from the East Valley Diversion Facility in excess of  
22 100 mg/L on January 12, 2017; and December 30, 2016.

23           94. The levels of zinc in storm water detected by the East Valley Diversion  
24 Facility have exceeded the freshwater numeric water quality standard established by  
25 the EPA of 0.12 mg/L for zinc (CMC) for zinc. For example, on February 28, 2014,  
26 the level of zinc measured at one of the East Valley Diversion Facility's storm water  
27

1 outfalls was 1.6 mg/L. That level of zinc is over 13 times the CMC for zinc.

2 Defendant also has measured levels of zinc in storm water discharged from the East  
3 Valley Diversion Facility in excess of 0.12 mg/L on March 17, 2012.

4 95. The levels of zinc in storm water detected by the East Valley Diversion  
5 Facility have exceeded the benchmark value and annual NAL for zinc of 0.26 mg/L  
6 established by EPA and the State Board, respectively. For example, on February 28,  
7 2014, the level of zinc measured at one of the East Valley Diversion Facility's storm  
8 water outfalls was 1.6 mg/L. That level of zinc is over 6 times the benchmark value  
9 and annual NAL for zinc. Defendant also has measured levels of zinc in storm water  
10 discharged from the East Valley Diversion Facility in excess of 0.26 mg/L on March  
11 17, 2012.

12 96. The levels of copper in storm water detected by the East Valley  
13 Diversion Facility have exceeded the freshwater numeric water quality standard  
14 established by the EPA of 0.013 mg/L (CMC). On March 17, 2012, the level of  
15 copper measured at one of the East Valley Diversion Facility's storm water outfalls  
16 was 0.21 mg/L. That level of copper is over 16 times the CMC for copper. Defendant  
17 also has measured levels of copper in storm water discharged from the East Valley  
18 Diversion Facility in excess of 0.013 mg/L on December 2, 2014; and February 28,  
19 2014.

20 97. The levels of copper in storm water detected by the East Valley  
21 Diversion Facility have exceeded the benchmark value and annual NAL for copper of  
22 0.0332 mg/L established by EPA and the State Board, respectively. On March 17,  
23 2012, the level of copper measured by Defendant at one of the East Valley Diversion  
24 Facility's storm water outfalls was 0.21 mg/L. That level of copper is over 6 times the  
25 benchmark value and annual NAL for copper.

26 98. The levels of iron in storm water detected by the East Valley Diversion  
27

1 Facility have exceeded the benchmark value and annual NAL for iron of 1 mg/L  
2 established by EPA and the State Board, respectively. For example, on December 2,  
3 2014, the level of iron measured by Defendant at one of the East Valley Diversion  
4 Facility's storm water outfalls was 11 mg/L. That level of copper is 11 times the  
5 benchmark value and annual NAL for iron. Defendant also has measured levels of  
6 iron in storm water discharged from the East Valley Diversion Facility in excess of 1  
7 mg/L on February 28, 2014; and March 17, 2012.

8 99. The levels of aluminum in storm water detected by the East Valley  
9 Diversion Facility have exceeded the benchmark value and annual NAL for aluminum  
10 of 0.75 mg/L established by EPA and the State Board, respectively. For example, on  
11 December 2, 2014, the level of aluminum measured by Defendant at one of the East  
12 Valley Diversion Facility's storm water outfalls was 8.4 mg/L. That level of  
13 aluminum is over 11 times the benchmark value and annual NAL for aluminum.  
14 Defendant also has measured levels of aluminum in storm water discharged from the  
15 East Valley Diversion Facility in excess of 0.75 mg/L on February 28, 2014; and  
16 March 17, 2012.

17 100. On information and belief, LAW alleges that iron, aluminum, zinc, and  
18 copper are pollutants likely to be present in the East Valley Diversion Facility's storm  
19 water discharges in significant quantities and that those pollutants have been present  
20 in the Facility's storm water discharges during the past five years. On information  
21 and belief, LAW alleges that the East Valley Diversion Facility is required to analyze  
22 its storm water discharges for iron, aluminum, zinc, and copper because the facility  
23 falls under SIC Code 5093. On information and belief, LAW alleges that Defendant  
24 never analyzed the East Valley Diversion Facility's storm water discharges for iron,  
25 aluminum, zinc, and copper since December 12, 2014.

26 101. On information and belief, LAW alleges that during the 2015-2016  
27

1 reporting year, Defendant failed to collect and analyze storm water samples from two  
2 out of four storm events at the East Valley Diversion Facility.

3 102. On information and belief, LAW alleges that during the 2013-2014 wet  
4 season, Defendant failed to collect and analyze storm water samples from a second  
5 storm event at the East Valley Diversion Facility.

6 103. On information and belief, LAW alleges that during the 2012-2013 wet  
7 season, Defendant failed to collect and analyze storm water samples from any storm  
8 events at the East Valley Diversion Facility.

9 104. On information and belief, LAW alleges that discharges occurred from  
10 the East Valley Diversion Facility on the following dates: November 30, 2012; May 6,  
11 2013; December 19, 2013; February 17, 2016; March 11, 2016; and March 29, 2016.

12 105. On information and belief, LAW alleges that Defendant has consistently  
13 failed to comply with Section B(14) of the 1997 Permit, and Section XV of the 2015  
14 Permit, by failing to complete proper ACSCE Reports as well as proper Annual  
15 Evaluations for the East Valley Diversion Facility.

16 106. On information and belief, Plaintiff alleges that since at least December  
17 31, 2011, Defendant has failed to implement BAT and BCT at the East Valley  
18 Diversion Facility for its discharges of pH, zinc, copper, aluminum, iron, TSS, and  
19 other potentially un-monitored pollutants. Effluent Limitation B(3) of the 1997  
20 Permit and Effluent Limitation V(A) of the 2015 Permit requires that Defendant  
21 implement BAT for toxic and nonconventional pollutants and BCT for conventional  
22 pollutants by no later than October 1, 1992. As of the date of this Complaint,  
23 Defendant has failed to implement BAT and BCT.

24 107. On information and belief, Plaintiff alleges that since at least December  
25 31, 2011, Defendant has failed to implement an adequate SWPPP for the East Valley  
26 Diversion Facility. Plaintiff is informed and believes, and thereupon alleges, that the  
27



1 SWPPP prepared for the East Valley Diversion Facility does not set forth site-specific  
2 best management practices for the Facility that are consistent with BAT or BCT for  
3 the East Valley Diversion Facility. Plaintiff is informed and believes, and thereupon  
4 alleges, that the SWPPP prepared for the East Valley Diversion Facility does not  
5 comply with the requirements of Section X(H) of the 2015 Permit. The SWPPP also  
6 fails to identify and implement advanced BMPs that are not being implemented at the  
7 East Valley Diversion Facility because they do not reflect best industry practice  
8 considering BAT/BCT. According to information available to LAW, the East Valley  
9 Diversion Facility's SWPPP has not been evaluated to ensure its effectiveness and  
10 revised where necessary to further reduce pollutant discharges. Plaintiff is informed  
11 and believes, and thereupon alleges, that the SWPPP does not include each of the  
12 mandatory elements required by the General Permit.

13 108. Information available to LAW indicates that as a result of these practices,  
14 storm water containing excessive pollutants is being discharged from the East Valley  
15 Diversion Facility during rain events into channels that empty into the Tujunga Wash.  
16 The Tujunga Wash flows into Reach 4 of the Los Angeles River, which flows into  
17 Reaches 3, 2, and then 1 of the Los Angeles River and ultimately flows to the Pacific  
18 Ocean via the Los Angeles River Estuary and San Pedro Bay.

19 109. Plaintiff is informed and believes, and thereupon alleges, that Defendant  
20 has failed and continues to fail to alter the East Valley Diversion Facility's SWPPP  
21 and site-specific BMPs consistent with the General Permit.

22 110. Information available to Plaintiff indicates that Defendant has not  
23 fulfilled the requirements set forth in the General Permit for discharges from the East  
24 Valley Diversion Facility due to the continued discharge of contaminated storm water.  
25 Plaintiff is informed and believes, and thereupon alleges, that all of the violations  
26 alleged in this Complaint are ongoing and continuous.

1 **VI. CLAIMS FOR RELIEF**

2 **FIRST CAUSE OF ACTION**

3 **Failure to Implement the Best Available and**  
 4 **Best Conventional Treatment Technologies**  
 5 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

6 111. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if  
 7 fully set forth herein.

8 112. The General Permit's SWPPP requirements and Effluent Limitation B(3)  
 9 of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit require  
 10 dischargers to reduce or prevent pollutants in their storm water discharges through  
 11 implementation of BAT for toxic and nonconventional pollutants and BCT for  
 12 conventional pollutants. Defendant has failed to implement BAT and BCT at the  
 13 Downtown Diversion Facility and the East Valley Diversion, respectively, for their  
 14 discharges of pH, zinc, copper, iron, aluminum, lead, TSS, COD, and other potentially  
 15 un-monitored pollutants in violation of Effluent Limitation B(3) of the 1997 Permit  
 16 and Effluent Limitation V(A) of the 2015 Permit.

17 113. Each day since December 31, 2011, that Defendant has failed to develop  
 18 and implement BAT and BCT in violation of the General Permit is a separate and  
 19 distinct violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. §  
 20 1311(a).

21 114. Defendant has been in violation of the BAT/BCT requirements every day  
 22 since December 31, 2011. Defendant continues to be in violation of the BAT/BCT  
 23 requirements each day that they fail to develop and fully implement BAT/BCT at the  
 24 Facility.

25 ///

26 ///

27  
 28 COMPLAINT

**SECOND CAUSE OF ACTION**  
**Discharges of Contaminated Storm Water**  
**in Violation of Permit Conditions and the Act**  
**(Violations of 33 U.S.C. §§ 1311, 1342)**

115. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if fully set forth herein.

116. Discharge Prohibition A(2) of the 1997 Permit and Discharge Prohibition III(C) of the 2015 Permit prohibit storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance. Receiving Water Limitation C(1) of the 1997 Permit and Receiving Water Limitation VI(B) of the 2015 Permit prohibit storm water discharges to any surface or ground water that adversely impact human health or the environment. Receiving Water Limitation C(2) of the 1997 Permit and Receiving Water Limitation VI(A) and Discharge Prohibition III(D) of the 2015 Permit prohibit storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in Statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan.

117. Plaintiff is informed and believes, and thereupon alleges, that since at least December 31, 2011, Defendant has been discharging polluted storm water from the Downtown Diversion Facility and the East Valley Diversion Facility, respectively, in excess of the applicable water quality standards for pH, zinc, copper, lead, as well as narrative water quality standards in violation of Receiving Water Limitation C(2) of the 1997 Permit and Receiving Water Limitation VI(A) and Discharge Prohibition III(D) of the 2015 Permit.

118. During every rain event, storm water flows freely over exposed materials, waste products, and other accumulated pollutants at the Downtown Diversion Facility and the East Valley Diversion Facility, becoming contaminated with pH, zinc, copper,

1 lead, sediment, oil & grease, and other potentially un-monitored pollutants at levels  
2 above applicable water quality standards. The storm water from the Downtown  
3 Diversion Facility then flows untreated into channels that empty into Reach 2 of the  
4 Los Angeles River, which flows into Reach 1 of the Los Angeles River and ultimately  
5 flows to the Pacific Ocean via the Los Angeles River Estuary and San Pedro Bay.  
6 The storm water from the East Valley Diversion Facility then flows into channels that  
7 empty into the Tujunga Wash. The Tujunga Wash flows into Reach 4 of the Los  
8 Angeles River, which flows into Reaches 3, 2, and then 1 of the Los Angeles River  
9 and ultimately flows to the Pacific Ocean via the Los Angeles River Estuary and San  
10 Pedro Bay.

11 119. Plaintiff is informed and believes, and thereupon alleges, that these  
12 discharges of contaminated storm water are causing or contributing to the violation of  
13 the applicable water quality standards in a Statewide Water Quality Control Plan and/or  
14 the applicable Regional Board's Basin Plan in violation of Receiving Water Limitation  
15 C(2) of the General Permit.

16 120. Plaintiff is informed and believes, and thereupon alleges, that these  
17 discharges of contaminated storm water are adversely affecting human health and the  
18 environment in violation of Receiving Water Limitation C(1) of the General Permit.

19 121. Every day since at least December 31, 2011, that Defendant has  
20 discharged and continue to discharge polluted storm water from the Downtown  
21 Diversion Facility and the East Valley Diversion Facility, respectively, in violation of  
22 the General Permit is a separate and distinct violation of Section 301(a) of the Act, 33  
23 U.S.C. § 1311(a). These violations are ongoing and continuous.

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28 COMPLAINT

**THIRD CAUSE OF ACTION**

**Failure to Prepare, Implement, Review, and Update  
an Adequate Storm Water Pollution Prevention Plan  
(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

122. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if fully set forth herein.

123. The General Permit requires dischargers of storm water associated with industrial activity to develop and implement an adequate SWPPP no later than October 1, 1992.

124. Defendant has failed to develop and implement an adequate SWPPP for the Downtown Diversion Facility and the East Valley Diversion Facility, respectively. Defendant's ongoing failure to develop and implement an adequate SWPPP for the Downtown Diversion Facility and the East Valley Diversion Facility is evidenced by, *inter alia*, Defendant's failure to justify each minimum and advanced BMP not being implemented.

125. Defendant has failed to update the Downtown Diversion Facility's and the East Valley Diversion Facility's SWPPP in response to the analytical results of the Facility's storm water monitoring.

126. Each day since December 31, 2011, that Defendant has failed to develop, implement and update an adequate SWPPP for the Downtown Diversion Facility and the East Valley Diversion Facility, respectively, is a separate and distinct violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

127. Defendant has been in violation of the SWPPP requirements every day since December 31, 2011. Defendant continues to be in violation of the SWPPP requirements each day that it fails to develop and fully implement an adequate SWPPP for the Downtown Diversion Facility and the East Valley Diversion Facility, respectively.

**FOURTH CAUSE OF ACTION**  
**Failure to Develop and Implement an**  
**Adequate Monitoring and Reporting Program**  
**(Violation of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

128. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if fully set forth herein.

129. The General Permit requires dischargers of storm water associated with industrial activity to have developed and be implementing a monitoring and reporting program (including, *inter alia*, sampling and analysis of discharges) no later than October 1, 1992.

130. Defendant has failed to develop and implement an adequate monitoring and reporting program for the Downtown Diversion Facility and the East Valley Diversion Facility, respectively.

131. Defendant's ongoing failure to develop and implement an adequate monitoring and reporting program are evidenced by, *inter alia*, its failure to analyze storm water discharges for numerous parameters including zinc, copper, aluminum, and iron.

132. Each day since at least December 31, 2011, that Defendant has failed to develop and implement an adequate monitoring and reporting program for the Downtown Diversion Facility and the East Valley Diversion Facility, respectively, in violation of the General Permit is a separate and distinct violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a). The absence of requisite monitoring and analytical results are ongoing and continuous violations of the Act.

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COMPLAINT

1 **VII. RELIEF REQUESTED**

2 Wherefore, Plaintiff respectfully requests that this Court grant the following  
3 relief:

4 a. Declare Defendant to have violated and to be in violation of the Act as  
5 alleged herein;

6 b. Enjoin Defendant from discharging polluted storm water from the  
7 Downtown Diversion Facility and the East Valley Diversion Facility, respectively,  
8 unless authorized by the 2015 Permit;

9 c. Enjoin Defendant from further violating the substantive and procedural  
10 requirements of the 2015 Permit;

11 d. Order Defendant to immediately implement storm water pollution  
12 control and treatment technologies and measures that are equivalent to BAT or BCT;

13 e. Order Defendant to immediately implement storm water pollution  
14 control and treatment technologies and measures that prevent pollutants in the  
15 Downtown Diversion Facility's and the East Valley Diversion Facility's storm water  
16 from contributing to violations of any water quality standards;

17 f. Order Defendant to comply with the Permit's monitoring and reporting  
18 requirements, including ordering supplemental monitoring to compensate for past  
19 monitoring violations;

20 g. Order Defendant to prepare a SWPPP for the Downtown Diversion  
21 Facility and a SWPPP for the East Valley Diversion Facility consistent with the  
22 Permit's requirements and implement procedures to regularly review and update the  
23 SWPPP;

24 h. Order Defendant to provide Plaintiff with reports documenting the  
25 quality and quantity of their discharges to waters of the United States and their efforts  
26



1 to comply with the Act and the Court's orders;

2 i. Order Defendant to pay civil penalties of up to \$37,500 per day per  
3 violation for each violation of the Act since October 28, 2011, up to and including  
4 November 2, 2015, and up to \$51,570 for violations occurring after November 2, 2015,  
5 pursuant to Sections 309(d) and 505(a) of the Act, 33 U.S.C. §§ 1319(d), 1365(a) and  
6 40 C.F.R. §§ 19.1 - 19.4;

7 j. Order Defendant to take appropriate actions to restore the quality of  
8 waters impaired or adversely affected by their activities;

9 k. Award Plaintiff's costs (including reasonable investigative, attorney,  
10 witness, compliance oversight, and consultant fees) as authorized by the Act, 33 U.S.C.  
11 § 1365(d); and,

12 l. Award any such other and further relief as this Court may deem  
13 appropriate.  
14

15 Dated: March 1, 2017

Respectfully submitted,

17 By: /s/ Douglas J. Chermak

18 Douglas J. Chermak

19 LOZEAU DRURY LLP

20 Attorneys for Los Angeles Waterkeeper  
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